

CERTIFICATION OF ENROLLMENT

SECOND SUBSTITUTE HOUSE BILL 1903

Chapter 295, Laws of 2011

62nd Legislature
2011 Regular Session

CHILD CARE--LICENSEES AND EMPLOYEES--BACKGROUND CHECKS

EFFECTIVE DATE: 07/22/11

Passed by the House April 15, 2011
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 12, 2011
Yeas 46 Nays 0

BRAD OWEN

President of the Senate

Approved May 10, 2011, 3:46 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 1903** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 11, 2011

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 1903

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

State of Washington 62nd Legislature 2011 Regular Session

By House Education Appropriations & Oversight (originally sponsored by Representatives Orwall, Goodman, Roberts, Reykdal, Kagi, Kenney, and Kelley)

READ FIRST TIME 02/24/11.

1 AN ACT Relating to background checks for child care licensees and
2 employees; amending RCW 43.215.215; reenacting and amending RCW
3 43.215.010; adding new sections to chapter 43.215 RCW; and creating a
4 new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.215 RCW
7 to read as follows:

8 Subject to appropriation, the department of early learning shall
9 establish and maintain an individual-based or portable background check
10 clearance registry by July 1, 2012. Any individual seeking a child
11 care license or employment in any child care facility licensed or
12 regulated under current law shall submit a background application on a
13 form prescribed by the department in rule.

14 **Sec. 2.** RCW 43.215.215 and 2007 c 415 s 5 are each amended to read
15 as follows:

16 (1) In determining whether an individual is of appropriate
17 character, suitability, and competence to provide child care and early
18 learning services to children, the department may consider the history

1 of past involvement of child protective services or law enforcement
2 agencies with the individual for the purpose of establishing a pattern
3 of conduct, behavior, or inaction with regard to the health, safety, or
4 welfare of a child. No report of child abuse or neglect that has been
5 destroyed or expunged under RCW 26.44.031 may be used for such
6 purposes. No unfounded or inconclusive allegation of child abuse or
7 neglect as defined in RCW 26.44.020 may be disclosed to a provider
8 licensed under this chapter.

9 (2) In order to determine the suitability of (~~applicants~~)
10 individuals newly applying for an agency license, new licensees, their
11 new employees, and other persons who newly have unsupervised access to
12 children in care, (~~and who have not resided in the state of Washington~~
13 during the three-year period before being authorized to care for
14 children,) shall be fingerprinted.

15 (a) The fingerprints shall be forwarded to the Washington state
16 patrol and federal bureau of investigation for a criminal history
17 record check.

18 (b) (~~The fingerprint criminal history record checks shall be at~~
19 ~~the expense of the licensee. The licensee may not pass this cost on to~~
20 ~~the employee or prospective employee, unless the employee is determined~~
21 ~~to be unsuitable due to his or her criminal history record.)) (i)
22 Effective July 1, 2012, all individuals applying for first-time agency
23 licenses, all new employees, and other persons who have not been
24 previously qualified by the department to have unsupervised access to
25 children in care must be fingerprinted and obtain a criminal history
26 record check pursuant to this section.~~

27 (ii) Persons required to be fingerprinted and obtain a criminal
28 record check pursuant to this section must pay for the cost of this
29 check as follows: The fee established by the Washington state patrol
30 for the criminal background history check, including the cost of
31 obtaining the fingerprints; and a fee paid to the department for the
32 cost of administering the individual-based/portable background check
33 clearance registry. The fee paid to the department must be deposited
34 into the individual-based/portable background check clearance account
35 established in section 5 of this act. The licensee may, but need not,
36 pay these costs on behalf of a prospective employee or reimburse the
37 prospective employee for these costs. The licensee and the prospective
38 employee may share these costs.

1 (c) The director shall use the fingerprint criminal history record
2 check information solely for the purpose of determining eligibility for
3 a license and for determining the character, suitability, and
4 competence of those persons or agencies, excluding parents, not
5 required to be licensed who are authorized to care for children.

6 (d) Criminal justice agencies shall provide the director such
7 information as they may have and that the director may require for such
8 purpose.

9 (e) No later than July 1, 2013, all agency licensees holding
10 licenses prior to July 1, 2012, persons who were employees before July
11 1, 2012, and persons who have been qualified by the department before
12 July 1, 2012, to have unsupervised access to children in care, must
13 submit a new background application to the department. The department
14 must require persons submitting a new background application pursuant
15 to this subsection (2)(e) to pay a fee to the department for the cost
16 of administering the individual-based/portable background check
17 clearance registry. This fee must be paid into the individual-
18 based/portable background check clearance account established in
19 section 5 of this act. The licensee may, but need not, pay these costs
20 on behalf of a prospective employee or reimburse the prospective
21 employee for these costs. The licensee and the prospective employee
22 may share these costs.

23 (f) The department shall issue a background check clearance card or
24 certificate to the applicant if after the completion of a background
25 check the department concludes the applicant is qualified for
26 unsupervised access to children in care. The background check
27 clearance card or certificate is valid for three years from the date of
28 issuance. A valid card or certificate must be accepted by a potential
29 employer as proof that the applicant has successfully completed a
30 background check as required under this chapter.

31 (g) The original applicant for an agency license, licensees, their
32 employees, and other persons who have unsupervised access to children
33 in care shall submit a new background check application to the
34 department, on a form and by a date as determined by the department.

35 (h) The applicant and agency shall maintain on-site for inspection
36 a copy of the background check clearance card or certificate.

37 (i) Individuals who have been issued a background check clearance

1 card or certificate shall report nonconviction and conviction
2 information to the department within twenty-four hours of the event
3 constituting the nonconviction or conviction information.

4 (j) The department shall investigate and conduct a redetermination
5 of an applicant's or licensee's background clearance if the department
6 receives a complaint or information from individuals, a law enforcement
7 agency, or other federal, state, or local government agency. Subject
8 to the requirements contained in RCW 43.215.300 and 43.215.305 and
9 based on a determination that an individual lacks the appropriate
10 character, suitability, or competence to provide child care or early
11 learning services to children, the department may: (i) Invalidate the
12 background card or certificate; or (ii) suspend, modify, or revoke any
13 license authorized by this chapter.

14 **Sec. 3.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are
15 each reenacted and amended to read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

18 (1) "Agency" means any person, firm, partnership, association,
19 corporation, or facility that provides child care and early learning
20 services outside a child's own home and includes the following
21 irrespective of whether there is compensation to the agency:

22 (a) "Child day care center" means an agency that regularly provides
23 child day care and early learning services for a group of children for
24 periods of less than twenty-four hours;

25 (b) "Early learning" includes but is not limited to programs and
26 services for child care; state, federal, private, and nonprofit
27 preschool; child care subsidies; child care resource and referral;
28 parental education and support; and training and professional
29 development for early learning professionals;

30 (c) "Family day care provider" means a child day care provider who
31 regularly provides child day care and early learning services for not
32 more than twelve children in the provider's home in the family living
33 quarters;

34 (d) "Nongovernmental private-public partnership" means an entity
35 registered as a nonprofit corporation in Washington state with a
36 primary focus on early learning, school readiness, and parental

1 support, and an ability to raise a minimum of five million dollars in
2 contributions;

3 (e) "Service provider" means the entity that operates a community
4 facility.

5 (2) "Agency" does not include the following:

6 (a) Persons related to the child in the following ways:

7 (i) Any blood relative, including those of half-blood, and
8 including first cousins, nephews or nieces, and persons of preceding
9 generations as denoted by prefixes of grand, great, or great-great;

10 (ii) Stepfather, stepmother, stepbrother, and stepsister;

11 (iii) A person who legally adopts a child or the child's parent as
12 well as the natural and other legally adopted children of such persons,
13 and other relatives of the adoptive parents in accordance with state
14 law; or

15 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
16 subsection (2)(a), even after the marriage is terminated;

17 (b) Persons who are legal guardians of the child;

18 (c) Persons who care for a neighbor's or friend's child or
19 children, with or without compensation, where the person providing care
20 for periods of less than twenty-four hours does not conduct such
21 activity on an ongoing, regularly scheduled basis for the purpose of
22 engaging in business, which includes, but is not limited to,
23 advertising such care;

24 (d) Parents on a mutually cooperative basis exchange care of one
25 another's children;

26 (e) Nursery schools or kindergartens that are engaged primarily in
27 educational work with preschool children and in which no child is
28 enrolled on a regular basis for more than four hours per day;

29 (f) Schools, including boarding schools, that are engaged primarily
30 in education, operate on a definite school year schedule, follow a
31 stated academic curriculum, accept only school-age children, and do not
32 accept custody of children;

33 (g) Seasonal camps of three months' or less duration engaged
34 primarily in recreational or educational activities;

35 (h) Facilities providing care to children for periods of less than
36 twenty-four hours whose parents remain on the premises to participate
37 in activities other than employment;

1 (i) Any agency having been in operation in this state ten years
2 before June 8, 1967, and not seeking or accepting moneys or assistance
3 from any state or federal agency, and is supported in part by an
4 endowment or trust fund;

5 (j) An agency operated by any unit of local, state, or federal
6 government or an agency, located within the boundaries of a federally
7 recognized Indian reservation, licensed by the Indian tribe;

8 (k) An agency located on a federal military reservation, except
9 where the military authorities request that such agency be subject to
10 the licensing requirements of this chapter;

11 (l) An agency that offers early learning and support services, such
12 as parent education, and does not provide child care services on a
13 regular basis.

14 (3) "Applicant" means a person who requests or seeks employment in
15 an agency.

16 (4) "Department" means the department of early learning.

17 (5) "Director" means the director of the department.

18 (6) "Employer" means a person or business that engages the services
19 of one or more people, especially for wages or salary to work in an
20 agency.

21 (7) "Enforcement action" means denial, suspension, revocation,
22 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)
23 or assessment of civil monetary penalties pursuant to RCW
24 43.215.300(3).

25 (8) "Probationary license" means a license issued as a disciplinary
26 measure to an agency that has previously been issued a full license but
27 is out of compliance with licensing standards.

28 (9) "Requirement" means any rule, regulation, or standard of care
29 to be maintained by an agency.

30 (10) "Conviction information" means criminal history record
31 information relating to an incident which has led to a conviction or
32 other disposition adverse to the applicant.

33 (11) "Negative action" means a court order, court judgment, or an
34 adverse action taken by an agency, in any state, federal, tribal, or
35 foreign jurisdiction, which results in a finding against the applicant
36 reasonably related to the individual's character, suitability, and
37 competence to care for or have unsupervised access to children in child
38 care. This may include, but is not limited to:

1 (a) A decision issued by an administrative law judge;

2 (b) A final determination, decision, or finding made by an agency
3 following an investigation;

4 (c) An adverse agency action, including termination, revocation, or
5 denial of a license or certification, or if pending adverse agency
6 action, the voluntary surrender of a license, certification, or
7 contract in lieu of the adverse action;

8 (d) A revocation, denial, or restriction placed on any professional
9 license; or

10 (e) A final decision of a disciplinary board.

11 (12) "Nonconviction information" means arrest, founded allegations
12 of child abuse, or neglect pursuant to chapter 26.44 RCW, or other
13 negative action adverse to the applicant.

14 NEW SECTION. Sec. 4. A new section is added to chapter 43.215 RCW
15 to read as follows:

16 Effective July 1, 2011, all agency licensees shall pay the
17 department a one-time fee established by the department. When
18 establishing the fee, the department must consider the cost of
19 developing and administering the registry, and shall not set a fee
20 which is estimated to generate revenue beyond estimated costs for the
21 development and administration of the registry. Fee revenues must be
22 deposited in the individual-based/portable background check clearance
23 account created in section 5 of this act and may be expended only for
24 the costs of developing and administering the individual-based/portable
25 background check clearance registry created in section 1 of this act.

26 NEW SECTION. Sec. 5. A new section is added to chapter 43.215 RCW
27 to read as follows:

28 The individual-based/portable background check clearance account is
29 created in the custody of the state treasurer. All fees collected
30 pursuant to RCW 43.215.215 and section 4 of this act must be deposited
31 in the account. Expenditures from the account may be made only for
32 development and administration, and implementation of the individual-
33 based/portable background check registry established in section 1 of
34 this act. Only the director of the department of early learning or the
35 director's designee may authorize expenditures from the account. The

1 account is subject to allotment procedures under chapter 43.88 RCW, but
2 an appropriation is not required for expenditures.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.215 RCW
4 to read as follows:

5 Upon resignation or termination with or without cause of any
6 individual working in a child care agency, the child care agency shall
7 report to the department within twenty-four hours if it has knowledge
8 of the following with respect to the individual:

- 9 (1) Any charge or conviction for a crime listed in WAC 170-06-0120;
10 (2) Any other charge or conviction for a crime that could be
11 reasonably related to the individual's suitability to provide care for
12 or have unsupervised access to children or care; or
13 (3) Any negative action as defined in RCW 43.215.010.

14 NEW SECTION. **Sec. 7.** To the extent that existing resources are
15 available, the department of early learning, the office of the
16 superintendent of public instruction, and educational service districts
17 shall develop a proposal to coordinate their common background check
18 activities. The proposal shall include the development of an
19 information sharing system, or protocol, that will operate in accord
20 with federal regulations. These agencies shall submit their proposal
21 to the legislature no later than December 15, 2011.

Passed by the House April 15, 2011.

Passed by the Senate April 12, 2011.

Approved by the Governor May 10, 2011.

Filed in Office of Secretary of State May 11, 2011.